MILES D. SCULLY (SBN: 135853)
JASON R. DAWSON (SBN: 208906)
GORDON & REES LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101
Telephone: (619) 696-6700
Facsimile: (619) 696-7124

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: CP DEPUTY

Attorneys for Defendant
NCR CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GLEN R. HADEN,	Case No. '07 CV 2205 DMS CAB
Plaintiff,	**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (DIVERSITY JURISDICTION)**
vs.	
NCR CORPORATION, and DOES 1 through 100,	Request for Jury Trial
Defendant.	

Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant NCR Corporation ("NCR") hereby removes to this Court the State Court action described below.

1. On August 22, 2007, Plaintiff Glen R. Hagen ("Hagen") commenced an action in the Superior Court of the State of California in and for the County of San Diego, entitled *Glen R. Hagen v. NCR Corporation,* Case No. 37-2007-00073587-CU-WT-CTL (the "Complaint"). The Complaint was not served on NCR, rather Hagen subsequently served a First Amended Complaint on NCR without a Summons on October 30, 2007 (the "FAC"). A true and correct copy of the FAC is attached hereto as Exhibit A.

2. The FAC alleges NCR wrongfully terminated Hagen's employment based on his age and medical disability, and further alleges breach of contract, invasion of privacy,

defamation, negligent supervision and intentional infliction of emotional distress. Hagen seeks general, special, punitive and treble damages in addition to costs and attorney's fees.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. Sec. 1332 and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. Sec. 1441(b) because it is a civil action between citizens of different states and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.

4. NCR is informed and believes that Hagen was, and still is, a citizen of the State of California. NCR was, at the time of the filing of this action, and still is, a citizen of the State of Maryland. NCR is incorporated in Maryland and has its principal place of business in Ohio. NCR is the only defendant in this action.

5. Based on the request for treble and punitive damages, in addition to the claim for general and specific damages, NCR believes Hagen is seeking damages in excess of $75,000.

6. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty days of NCR's receipt of the FAC.

7. NCR requests a jury trial.

8. Written notice of the filing of this notice will be given to Hagen's counsel and a copy of this notice will be filed promptly with the Clerk of the Superior Court of the State of California, County of San Diego.

Dated: November 19, 2007

GORDON & REES LLP

By: [signature]
Miles D. Scully
Jason R. Dawson
Attorneys for Defendant
NCR Corporation

Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

CNA/1047006/5221305v.1

EXHIBIT A

10-30-07 – Co5 4A

THOMAS R. GILL, ESQ. CSBN 061267
THE GILL GROUP, A.P.C.
6046 Cornerstone Ct. W., Suite 161
San Diego, California 92121
Tel: (619) 286-9393
Fax: (858) 695-1947

Attorney for Plaintiff
GLEN R. HAGEN

SUPERIOR COURT, STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

GLEN R. HAGEN, Plaintiff, v. NCR CORPORATION; and DOES 1 through 100, RN Defendant.	Case No. 37-2007-00073587-CU-WT-CTL **FIRST AMENDED COMPLAINT FOR:** **1. AGE DISCRIMINATION IN VIOLATION OF FEHA** **2. DISABILITY DISCRIMINATION IN VIOLATION OF FEHA** **3. WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY** **4. BREACH OF IMPLIED CONTRACT NOT TO TERMINATE EXCEPT FOR JUST CAUSE** **5. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING** **6. INVASION OF PRIVACY** **7. DEFAMATION** **8. NEGLIGENT SUPERVISION** **9. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** **JURY TRIAL DEMANDED**

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EXHIBIT A

Plaintiff Glen R. Hagen (hereinafter "Plaintiff") hereby alleges as follows:

THE PARTIES

1. Plaintiff is an individual residing in the State of California, County of San Diego.

2. Plaintiff is informed and believes and thereon alleges that NCR CORPORATION (hereinafter "NCR") is, and at all times relevant hereto has been, a Maryland corporation qualified to do business in the State of California, with a place of business located in the County of San Diego.

3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously named defendants is in some manner responsible for the acts, omissions, and/or damages alleged herein.

4. Plaintiff is informed and believes, and thereon alleges, that each of the DOE defendants sued herein as DOES 1 through 100 were the agents, employees, representatives, partners, subsidiaries, parents or related companies or agencies, and/or joint ventures of the other defendants sued herein and, at all times relevant hereto, were acting within the course and scope of such agency, employment, representation, or other relationship, with the authority, permission, consent and/or ratification of such other defendants.

JURISDICTION AND VENUE

5. Plaintiff has timely exhausted his administrative remedies with respect to his Fair Employment and Housing Act [FEHA] causes of action. He has received a Right To Sue Letter.

6. This Court has jurisdiction over the parties because Plaintiff resides in the County of San Diego, and because all of the events constituting the wrongful conduct as set forth herein occurred in the County of San Diego, State of California.

7. Venue is proper in this Court under California Code of Civil Procedure Section 395 because the events took place in and the named defendants can be found in the County of San Diego, State of California.

8. Venue is proper within this Division pursuant to Local Rule 1.7 because defendant has a place of business within the geographic limits of this Division.

FACTUAL BACKGROUND

9. Plaintiff is a 56 year-old Caucasian male who has begun to suffer from short-term memory loss.

10. Plaintiff was first employed by NCR in October 1973; since then, Plaintiff was a major part of NCR's Software Development Group until his transfer to the Packaging Group in 2004, as discussed *infra*.

11. During his thirty-three-year tenure, Plaintiff proved to be a loyal and productive employee as evidenced by his exemplary performance reviews and many accomplishments for NCR.

12. Plaintiff's employee evaluations include comments such as: "[Plaintiff] is committed to excellence and strives to build quality products," "[Plaintiff] has repeatedly gone above and beyond", and "[Plaintiff] takes ownership on the projects that he works."

13. Despite Plaintiff's many years of service and numerous accomplishments, beginning in 2004 and lasting through approximately the end of March 2006, Defendant engaged in unlawful conduct toward Plaintiff as more particularly described hereinafter.

14. Plaintiff's employer, NCR, as well as his direct supervisors, Joe Fleming (hereinafter "Fleming"), John Corrigan (hereinafter "Corrigan"), Jeff Carter (hereinafter "Carter"), and Bob Wang (hereinafter "Wang"), discriminated against Plaintiff based on his age and disability.

15. Plaintiff is now forced to file this lawsuit for wrongful discharge and discrimination. This follows months of outrageous conduct by Defendant including the following:

a) Defendant willfully created and maintained a hostile and intimidating work environment directed toward Plaintiff;

b) Defendant took adverse employment actions against Plaintiff, up to and including termination, without proper cause, discriminating against Plaintiff based on his age and disability;

c) Defendant violated both state and federal law, designed to prohibit age and disability discrimination in employment.

16. Defendant violated Plaintiff's rights as a disabled employee by, *inter alia,* intentionally moving Plaintiff from the Software Development Group to the unfamiliar (to him) Packaging Group in or about 2004. Plaintiff's problems with short-term memory loss prevented him from assimilating new information, which in turn prohibited him from functioning adequately in the new position in Packaging. However, his short-term memory loss did not affect his ability to function in his position in the Software Development Group because it did not require him to acquire new skills.

17. Defendant was aware that the required knowledge for Packaging was substantially different than that with which Plaintiff was familiar; however, NCR intentionally neglected to provide the required training necessary, and made any attempt of Plaintiff to obtain training impossible, inclusive of the following incidents:

a) Defendant failed to provide Plaintiff with the training manuals for the tools and databases used in Packaging;

b) Defendant ignored Plaintiff's persistent requests for the materials, *inter alia,* and refused to assign anyone to train Plaintiff;

c) Therefore, the only way Plaintiff could acquire the necessary knowledge to perform such unfamiliar responsibilities was to interrupt coworkers and ask for guidance.

18. The reassignment to Packaging had a disproportionate effect on Plaintiff because he was the only member of the Software Development Group selected to be transferred to another group in 2004.

19. Defendant was aware of Plaintiff's age and disability and perceived an economic cost to NCR; from this Defendant determined to effect Plaintiff's termination.

20. Plaintiff's recent performance reviews indicate NCR knew of his disability three years prior to his termination as evidenced by the following:

a) In early 2004, Plaintiff received his NCR PERFORMANCE FEEDBACK AND REVIEW FORM - YEAR 2003, signed by both Corridan and Carter;

b) As had been the case for his entire career at NCR, Plaintiff received a rating of at least "Successful" in each category;

c) However, under "Areas for Improvement", Plaintiff was given the directive to "Stay focused on primary work tasks."

21. Therefore, Defendant knew something was amiss with Plaintiff's short-term memory.

22. Plaintiff's first performance evaluation in the Packaging group, which he and Fleming signed and approved on February 23, 2005, was worse; Plaintiff received an overall rating of "Needs Improvement" accompanied by the following comments:

a) One of the areas listed under "Areas of Improvement" included "staying on task" - another acknowledgment of Plaintiff's memory difficulty, and indeed at least a potential disability was affecting his work.

23. The 2005 performance review, signed on February 21, 2006 by Fleming and approved on March 3, 2006 by Wang, was all the more revealing as Plaintiff again received an overall rating of "Needs Improvement".

a) Listed under "Areas for Improvement" are the following comments which, quite clearly, showcase both Defendant's knowledge of Plaintiff's disability and Defendant's intent to terminate Plaintiff's employment:

i. "Needs to develop more focus on tasks at hand and attack issues with little supervision";

ii. "Needs to move from the Packaging team to a position more suited to his skill set before end of Q206. Once RoHS project is completed, there is no visible or suitable project in Packaging for Plaintiff that fits his skill set."

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b) Additional evidence of Defendant's knowledge of Plaintiff's disability can be found in the "Targets Missed" section, which states in pertinent part: "Repeatedly required multiple explanations for RoHS activities and assignments."

24. Indeed, Plaintiff's performance reviews from 2003-2006 explicitly indicate Defendant knew about Plaintiff's disability in 2003; moreover, Defendant intentionally transferred him to Packaging after becoming aware of his condition.

25. However, Defendant's statements in Plaintiff's 2005 review confound for the following reasons:

a) Plaintiff had a complete lack of Packaging experience and there was a complete absence of training materials for the Packaging Group;

b) Due to his inexperience and the complete lack of assistance from NCR, the only way for Plaintiff to effectively learn his new job was to ask his coworkers, which he frequently did;

c) However, despite his best efforts, and because of Defendant's abdication of its duty to accommodate Plaintiff's disability and to provide him with the resources that would enable him to satisfactorily perform his job duties, Plaintiff was given a poor performance review without so much as a word of recognition of the difficulties he endured.

26. Therefore, Plaintiff's poor performance reviews were purportedly caused, in part, by Plaintiff's necessitating "multiple explanations" of his assignments. Plaintiff required "multiple explanations" not only because of the lack of training materials to which Plaintiff could refer, but also because of his short-term memory loss.

27. However, at no point was there any discussion with or notification, much less any accommodation offered to Plaintiff regarding his short-term memory problems.

28. Defendant used Plaintiff's poor performance reviews as grounds for termination.

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29. Defendant failed to provide the training Plaintiff needed within Packaging, and additionally denied the accommodation needed for his ever more apparent disability.

30. Defendants knew the RoHS project in Packaging, to which Plaintiff was transferred, would conclude in 2006, and thus set the stage for Plaintiff's termination.

31. Despite Defendant's knowledge, no action whatsoever was taken by NCR to assist Plaintiff; nor was there even a discussion as to how NCR might be able to assist.

32. Plaintiff is informed and believes and thereon alleges that, beginning around January 2006, Defendant disclosed private information regarding Plaintiff's disability to individuals who had no legitimate need to know about it. Plaintiff is further informed and believes and thereon alleges that these disclosures included conspiratorial discussions regarding how Defendant could terminate Plaintiff's employment without the appearance of disability discrimination, and included requests to co-workers to convince Plaintiff to apply for disability benefits.

33. On March 10, 2006, Plaintiff received a letter from Defendant labeled "Reduction-In-Force", signed by Fleming, stating Plaintiff's position was being eliminated, effective March 24, 2006. Plaintiff is informed and believes and thereon alleges that the purported reduction in force was pretext for discrimination on the basis of age and disability because Plaintiff was the only employee terminated from the Packaging Group from 2006 to the present.

FIRST CAUSE OF ACTION
AGE DISCRIMINATION IN VIOLATION OF FEHA
(Against Defendant NCR Corporation and DOES 1 through 100)

34. Plaintiff incorporates paragraphs 1 through 33 by reference as though set forth at length herein.

35. Plaintiff was at all times material hereto an employee covered by the California Government Code §12940 prohibiting discrimination in employment on the basis of age.

36. Plaintiff is over 40 years of age, and was known by his employer to be over 40 years of age, and is thus protected by the age discrimination provisions of California Government Code §12941.

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37. Defendant NCR is, and at all times material hereto was, an employer within the meaning of the California Government Code §12926(c) and, as such, is barred from discriminating in employment decisions on the basis of age as set forth in California Government Code §12941.

38. Until 2004 when Plaintiff was transferred to NCR's Packaging Group, Plaintiff was performing the duties of his employment in a satisfactory manner.

39. Plaintiff was treated differently from younger employees in that he was the only employee transferred from the Software Development Group in 2004 and, on information and belief, was the only employee who, upon reassignment to a new group, did not receive the materials and training necessary to learn the skills for his new work assignment.

40. Defendant has discriminated against Plaintiff based upon his age in violation of California Government Code §12941 by engaging in a course of conduct, which has included, but is not limited to, the acts alleged above.

41. Plaintiff's protected status – being over 40 years of age – was a motivating reason for said conduct and adverse employment actions, including discharge.

42. Plaintiff filed timely charges of age discrimination with the California Department of Fair Employment and Housing [DFEH] and received notice of the right to sue permitting Plaintiff to bring this action. Plaintiff has therefore exhausted administrative remedies.

43. As a proximate result of Defendant's continuing unlawful treatment of Plaintiff, Plaintiff has suffered and continues to suffer substantial losses in earnings, bonuses, deferred compensation, retirement benefits and other employment benefits and has suffered, and continues to suffer, embarrassment, humiliation, and mental anguish, all to his damage in an amount according to proof.

44. Defendant committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights.

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45. As a result of Defendant's continuous discriminatory acts as alleged herein, Plaintiff is entitled to attorneys' fees and costs of suit as provided by California Government Code §12965(b).

SECOND CAUSE OF ACTION
DISABILITY DISCRIMINATION IN VIOLATION OF FEHA
(Against Defendant NCR Corporation and DOES 1 through 100)

46. Plaintiff incorporates paragraphs 1 through 45 by reference as though set forth at length herein.

47. Plaintiff was at all times material hereto an employee covered by the California Government Code §12940 prohibiting discrimination in employment based upon disability.

48. Defendant NCR is, and at all times material hereto was, an employer within the meaning of the California Government Code §12926(c) and, as such, is barred from discriminating in employment decisions, and/or discharging employees on the basis of disability, or perceived disability, as set forth in California Government Code §12940(a) and §12926(m).

49. Plaintiff suffers from a disability – short-term memory loss. Until 2004 when Plaintiff was transferred to NCR's Packaging Group, Plaintiff was performing the duties of his employment in a satisfactory manner. Defendant was aware of Plaintiff's disability as evidenced by the performance reviews repeatedly noting that Plaintiff needed to stay focused on the task at hand. Nonetheless, Defendant failed to accommodate Plaintiff's disability by either providing him with the resource materials that would enable him to satisfactorily perform his job duties in the Packaging Group, or transfer him back to Software Development where he could rely on his long-term memory, which was unimpaired. With such reasonable accommodation, Plaintiff could have continued to satisfactorily perform his essential job duties.

50. Plaintiff is informed and believes and thereon alleges that, beginning around January 2006, Defendant disclosed private information regarding Plaintiff's disability to individuals who had no legitimate need to know about it. Plaintiff is further informed and believes and thereon alleges that these conversations included conspiratorial discussions regarding how Defendant could

terminate Plaintiff's employment without the appearance of disability discrimination, and included requests to co-workers to convince Plaintiff to apply for disability benefits.

51. Defendant has discriminated against Plaintiff on the basis of his disability in violation of California Government Code §12940 by engaging in a continuing course of conduct and adverse employment action which included, but is not limited to, at least some of the acts alleged above.

52. Plaintiff's protected status – disability – was a motivating reason for the said conduct and adverse employment actions, including discharge.

53. Plaintiff filed timely charges of discrimination on the basis of disability with the DFEH and received notice of the right to sue, permitting Plaintiff to bring this action. Plaintiff has therefore exhausted all of his administrative remedies.

54. As a proximate result of Defendant's unlawful treatment of Plaintiff, Plaintiff has suffered and continues to suffer substantial losses in earnings, bonuses, deferred compensation, and other employment benefits and has suffered, and continues to suffer, embarrassment, humiliation, and mental anguish, all to his damage in an amount according to proof.

55. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights.

56. As a result of Defendant's continuous discriminatory acts as alleged herein, Plaintiff is entitled to attorneys' fees and costs of suit as provided by California Government Code §12965(b).

THIRD CAUSE OF ACTION
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY
(Against Defendant NCR Corporation and DOES 1 through 100)

57. Plaintiff incorporates paragraphs 1 through 56 by reference as though set forth at length herein.

58. It is contrary to the policy of the State of California, as set forth in FEHA, for employers to discharge employees because of their age, and/or disability.

59. Plaintiff was discharged due to his age and/or disability.

60. Defendant's discharge of Plaintiff, therefore, constituted a violation of all of the aforementioned public policies.

61. As a proximate result of the aforementioned wrongful acts and/or omissions of Defendant, Plaintiff has suffered, and continues to suffer from: substantial losses in earnings, and other employment-related benefits; embarrassment, humiliation, loss of self-esteem, and anguish; and from debilitating physical maladies and manifestations of distress, all to Plaintiff's damage in an amount unknown at this time, but according to proof at the time of trial.

62. As a further proximate result of the aforementioned wrongful conduct, Plaintiff has had medical expenses in connection with the physical and/or emotional damages suffered, and has had to employ the services of attorneys in an attempt to obtain the benefits to which Plaintiff is entitled by law, all to Plaintiff's additional damages in an amount unknown at this time, but according to proof at the time of trial.

63. In performing the acts and/or omissions alleged herein, Defendant acted maliciously, fraudulently, despicably and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED CONTRACT NOT TO TERMINATE EXCEPT FOR JUST CAUSE

(Against Defendant NCR Corporation and DOES 1 through 100)

64. Plaintiff incorporates paragraphs 1 through 63 by reference as though set forth at length herein.

65. During Plaintiff's employment there existed an express and implied in fact employment contract between NCR and Plaintiff which included, but was not limited to, the following terms and conditions:

a) Plaintiff would be able to continue his employment with NCR indefinitely, as long as he carried out his duties in a proper and competent manner;

b) Plaintiff would not be disciplined, discharged or demoted for other than good, just and sufficient cause with notice thereof;

c) Plaintiff would be allowed a fair and ample opportunity to defend himself and improve his performance should he be considered for discipline, discharge or demotion.

66. This total employment contract was evidenced by written personnel policies, discipline procedures and oral representations made by NCR, and the parties' entire course of conduct.

67. Plaintiff's reliance on and belief in and acceptance in good faith of all of the assurances, promises and representations as indicated above led him to reasonably believe that his employment was secure and that thereby there existed a contract of continuous employment with Defendant.

68. Plaintiff's prior performance evaluations communicated to Plaintiff the idea he had performed satisfactorily and that his job was secure. Plaintiff, in good faith, relied upon the representations and believed them to be true.

69. Defendant's termination of Plaintiff, therefore, constituted a violation of all of the aforementioned public policies, because Defendant failed to carry out its responsibilities under the terms of the employment contract by failing to provide adequate and fair opportunities and constructively terminating him based on intolerable working conditions, hostile work environment and his advanced age and disability.

70. Despite the representations made to Plaintiff and the reliance he placed on them, Defendant refused to carry out its responsibilities under the terms of the employment contract in the following ways:

a) By wrongfully terminating Plaintiff, without good, just and sufficient cause, and without giving him notice of or opportunity to respond to the allegations against him;

b) By terminating Plaintiff without regard to or in compliance with the requirements of the aforesaid agreement and without good, just and sufficient cause; and

c) By unlawfully characterizing Plaintiff's discharge in an arbitrary, untrue and capricious manner.

71. As a proximate result of the aforementioned wrongful acts and/or omissions of Defendant, Plaintiff has suffered, and continues to suffer from: substantial losses in earnings, and other employment-related benefits, all to Plaintiff's damage in an amount unknown at this time, but according to proof at the time of trial.

FIFTH CAUSE OF ACTION
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(Against Defendant NCR Corporation and DOES 1 through 100)

72. Plaintiff incorporates paragraphs 1 through 71 by reference as though set forth at length herein.

73. Implied into the above-referenced employment contract is a covenant of good faith and fair dealing by which NCR promised to give full cooperation to Plaintiff and his performance under the employment contract and to refrain from doing any act which would prevent or impede him from performing all the conditions of the contract to be performed by him, or any act that would prevent or impede Plaintiff's enjoyment of the fruits of said contract, such as being promoted. Specifically, this covenant of good faith and fair dealing required NCR to act fairly, honestly, and reasonably to perform the terms and conditions of the agreement.

74. Plaintiff was in an inherently unequal bargaining position in his dealings with NCR. In addition, Plaintiff committed to the above-referenced contract, and took the reasonable actions alleged herein in reliance on said contract. Plaintiff entrusted his entire livelihood to NCR's willingness to perform its obligations under the contract, and risked suffering grave harm if NCR failed to perform. NCR was aware of Plaintiff's vulnerability in this regard, and other vulnerabilities, as set forth above.

75. Defendant breached the above-referenced covenant without conducting any reasonable investigation concerning their obligations under said contract, without good, just and sufficient cause, for reasons totally extraneous to the contract, and for the purpose of defeating

Plaintiff's enjoyment of the benefits of the contract. Accordingly, Defendant breached its implied duty of good faith and fair dealing by doing the following:

a) Preventing Plaintiff from satisfactorily performing his job duties by failing to provide him with the resources necessary to do so or, alternatively, transferring him back to the Software Development Group where he could and always had satisfactorily performed his job duties;

b) Failing to follow its written and implied in fact policies, and/or to apply the same personnel practices to Plaintiff that it provides to other employees.

76. As a proximate result of the aforementioned wrongful acts and/or omissions of Defendant, Plaintiff has suffered, and continues to suffer from: substantial losses in earnings, and other employment-related benefits, all to Plaintiff's damage in an amount unknown at this time, but according to proof at the time of trial.

SIXTH CAUSE OF ACTION
INVASION OF PRIVACY
(Against Defendant NCR Corporation and DOES 1 through 100)

77. Plaintiff incorporates paragraphs 1 through 76 by reference as though set forth at length herein.

78. Plaintiff is informed and believes and thereon alleges that, beginning on or about January 2006, and continuing until discharge, Defendant's management employees, without Plaintiff's consent, intentionally invaded Plaintiff's right to privacy by publicly disclosing to others private facts regarding Plaintiff's disability in which Plaintiff was identified by name. The persons to whom the confidential information regarding Plaintiff's disability was disclosed had no right or need to know the information disclosed. Plaintiff is further informed and believes and thereon alleges that these conversations included conspiratorial discussions regarding how Defendant could terminate Plaintiff's employment without the appearance of disability discrimination, and included requests to co-workers to convince Plaintiff to apply for disability benefits.

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79. The statements underlying the invasion concern the mental capabilities or incapacity of Plaintiff. Said statements were offensive and objectionable to a reasonable person, were not of legitimate public concern, and placed Plaintiff in a false light in the public eye.

80. The disclosures by Defendant were publicly made so that any person within earshot could overhear the unwarranted disclosure and planned misuse of sensitive and confidential information regarding Plaintiff.

81. The facts disclosed about Plaintiff were private facts that Plaintiff desired to keep private. From the time he began to experience memory difficulties, Plaintiff took numerous personal efforts to compensate for and maintain the privacy of his disability by asking other employees for assistance, and Plaintiff had never publicized facts pertaining to his disability.

82. The disclosure by Defendant of the above facts was offensive and objectionable to Plaintiff and to a reasonable person of ordinary sensibilities in that it revealed extremely private details about Plaintiff's mental and intellectual capabilities, as well as his medical history, that Plaintiff had fully attempted to keep private.

83. Involving Plaintiff's co-workers to convince him to apply for disability was a further intrusion into Plaintiff's privacy. The private facts disclosed by Defendant were not of legitimate public concern and were intrusive in significant disproportion to their relevance.

84. As a proximate result of the above disclosure, Plaintiff was scorned and abandoned by his friends, co-workers, and managers, exposed to contempt and ridicule, and suffered loss of reputation and standing in his place of employment, all of which caused him humiliation, embarrassment, hurt feelings, mental anguish, and suffering, all to his general damage in an amount unknown at this time, but according to proof at the time of trial.

85. As a further proximate result of the above-mentioned disclosure, Plaintiff has been wrongfully terminated, all to his special damage in an amount unknown at this time, but according to proof at the time of trial.

86. In making the disclosure described above, Defendant was guilty of oppression, fraud, or malice, in that Defendant made the disclosure with the intent to vex, injure, or annoy Plaintiff

with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of punitive damages.

SEVENTH CAUSE OF ACTION
DEFAMATION
(Against Defendant NCR Corporation and DOES 1 through 100)

87. Plaintiff incorporates paragraphs 1 through 86 by reference as though set forth at length herein.

88. NCR, by writing, printing, electronic transmission and/or orally, made statements to persons other than Plaintiff, including but not limited to, prospective employers of Plaintiff, to the effect Plaintiff was an incompetent employee.

89. Defendant either knew the statements to be false and defamed Plaintiff with the intent to prevent Plaintiff from obtaining new employment and to directly injure him in his occupation by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or failed to use reasonable care to determine the truth or falsity of these statements.

90. The persons to whom Defendant made the aforesaid false statements reasonably believed the statements to be true; furthermore, the statements were made with malice and publicly disclosed without the protection of a constitutional or qualified privilege.

91. As a result of false statements made about Plaintiff, Plaintiff has been wrongfully terminated by Defendant and denied employment for positions for which he is otherwise qualified.

92. Under principles of *respondeat superior*, Defendant is liable in the case of slander, where written and/or oral publication occurs, in which false statements are communicated to any person other than the party defamed.

93. Labor Code sections 1050 and 1052 prohibit employers from preventing or attempting to prevent a former employee from obtaining new employment by misrepresentation. Labor Code section 1054 provides in pertinent part that any employer "who violates any provision of sections 1050 to 1052, inclusive, is liable to the party aggrieved, in a civil action, for treble damages".

94. As a result of the aforesaid false statements, Plaintiff has suffered general and special damages, including severe emotional distress, in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
NEGLIGENT SUPERVISION
(Against Defendant NCR Corporation and DOES 1 through 100)

95. Plaintiff incorporates paragraphs 1 through 94 by reference as though set forth at length herein.

96. Plaintiff is informed and believes and thereon alleges that in doing the acts as heretofore alleged, NCR knew, or in the exercise of reasonable diligence should have known, that Plaintiff's supervisors were incompetent and/or unfit, in whole or in pertinent part, to perform the duties for which they were employed, and that an undue risk to persons such as Plaintiff would exist because of the employment.

97. Despite this knowledge, NCR continued to retain such supervisors in conscious disregard of the rights to safety of others, including Plaintiff.

98. As a proximate result of Defendant's aforementioned wrongful conduct, including but not limited to its willful misconduct towards Plaintiff, Plaintiff has suffered and continues to suffer grave emotional distress, including embarrassment, humiliation, loss of self-esteem, depression, loss of the enjoyment of life, anguish and loss of credibility, all to Plaintiff's damage in an amount unknown at this time, but according to proof at the time of trial.

NINTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Defendant NCR Corporation and DOES 1 through 100)

99. Plaintiff incorporates paragraphs 1 through 98 by reference as though set forth at length herein.

100. Defendant's conduct, as thoroughly alleged in paragraphs 1 through 99, above, including their willful misconduct towards Plaintiff, was extreme and outrageous conduct amounting to intentional infliction of emotional distress which was intended to cause and/or was done in conscious disregard of the probability of causing Plaintiff to suffer severe emotional distress.

101. As a proximate result of Defendant's aforementioned wrongful conduct, including but not limited to their willful misconduct towards Plaintiff, Plaintiff has suffered and continues to suffer grave emotional distress, including embarrassment, humiliation, loss of self-esteem, depression, loss of the enjoyment of life, anguish and loss of credibility, all to Plaintiff's damage in an amount unknown at this time, but according to proof at the time of trial.

102. As a further proximate result of the aforementioned wrongful conduct, Plaintiff has had to employ the services of attorneys to pursue his legal rights, to Plaintiff's damage in an amount unknown at this time but according to proof at the time of trial.

103. Defendant's conduct was willful, wanton, malicious, and was with reckless disregard for the rights of Plaintiff so as to justify an award of exemplary and punitive damages.

WHEREFORE, Plaintiff prays for judgment as stated below:

A. For general damages in an amount unknown at this time, but according to proof at the time of trial;

B. For special damages in an amount unknown at this time, but according to proof at the time of trial;

C. For punitive damages from all defendants, as allowed by law, and according to proof at the time of trial;

D. For treble damages for defendants' violation of Labor Code sections 1050 and 1052;

E. For reasonable attorney's fees and costs, as allowed by law, and according to proof at the time of trial;

F. For a jury trial; and

G. For such other and further relief as this court deems just and proper.

Respectfully submitted,

Dated this 18 day of October, 2007

THOMAS R. GILL, ESQ.
The Gill Group, APC
Attorney for Plaintiff
GLEN R. HAGEN

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 144668 - KD
*** * C O P Y * ***
November 19, 2007
16:29:39

Civ Fil Non-Pris
USAO #.: 07CV2205
Judge..: DANA M SABRAW
Amount.: $350.00 CK
Check#.: BC 64688

Total-> $350.00

FROM: CIVIL FILING
HAGEN V. NCR CORP.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS	DEFENDANTS
GLEN R. HAGEN	NCR CORPORATION
(b) County of Residence of First Listed Plaintiff San Diego, California (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Montgomery County, Maryland (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Miles D. Scully (SBN: 135853) / Jason R. Dawson (SBN: 208906) GORDON & REES LLP 101 W. Broadway, Suite 1600 San Diego, CA 92101 619-696-6700	Attorneys (If Known)

FILED 07 NOV 19 AM 11:06 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY: CP DEPUTY

'07 CV 2205 DMS CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury—Med. Malpractice
☐ 365 Personal Injury — Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities – Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt.Reporting & Disclosure Act
☐ 740 Railway Labor Act
☒ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
28 U.S.C. § 1441(b)
Brief description of cause:
Wrongful termination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $General, special and punitive damages
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE November 19, 2007

SIGNATURE OF ATTORNEY OF RECORD
MD Scully

FOR OFFICE USE ONLY

RECEIPT # 144608 AMOUNT $360 APPLYING IFP 11/19/07 JUDGE ______ MAG. JUDGE ______

CR

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

American LegalNet, Inc. www.USCourtForms.com